Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

ALICE CLISSURAS and
PATRICIA CLISSURAS,

Plaintiffs-Appellants and
Petitioners,

v.

CITY UNIVERSITY OF NEW YORK,
TEACHERS' RETIREMENT SYSTEM OF
THE CITY OF NEW YORK,
PROFESSIONAL STAFF CONGRESS/CITY
UNIVERSITY OF NEW YORK,
PSC-CUNY WELFARE FUND:

ALL CAUSALLY RESPONSIBLE INDIVIDUALS
OF AFORESAID FOUR AGENCIES;
ALL POTENTIALLY RESPONSIBLE AGENCIES; and
ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF
SAID POTENTIALLY RESPONSIBLE AGENCIES,

Defendants-Appellees and
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SECOND CIRCUIT COURT OF APPEALS

APPELLANTS' PETITION FOR WRIT OF CERTIORARI AND APPENDIX IN SUPPORT

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Petitioners
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QUESTIONS PRESENTED FOR REVIEW

1. Did the District Court for the Southern District err, as to the taking of plaintiffs' pensions, medical coverages, and employment identities, by not determining plaintiffs' Motions for Dismissal of Defendants for failure to answer and defend against plaintiffs' prima facie case Complaints; by granting defendants' Motions to Dismiss fact-laden Complaints, without affirmation of opposing facts and argument of controverting law, without findings of fact and conclusions of law, as to the causes of action, and without a hearing; and by not determining plaintiffs' Motions to Vacate Orders granting dismissal of Complaint as against defendants and to determine plaintiffs' Dismissal Motions, which remain undetermined.

2. Did the Second Circuit err by not determining plaintiffs' Appeals, by affirming the judgment of the District Court as it pertains to the defendants; by not determining appellants' Petitions for panel and en banc rehearing; and by not correcting the errors of the Southern District.

3. Did the Southern District and the Second Circuit err by not ruling on deprivations of Constitutional equal protection of the laws and due process, on conversion of identities from State to City teachers, and on fraud.

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*As of July 8, 2004 Docket

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2004

ALICE CLISSURAS, Docket No. 03-7531, v.
CITY UNIVERSITY OF NEW YORK, et al.

PATRICIA CLISSURAS, Docket No. 03-7532, v.
CITY UNIVERSITY OF NEW YORK, et al.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SECOND CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE and ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners, Alice Clissuras (AC) and Patricia Clissuras (PC), respectfully petition for a writ of certiorari to review:

OPINIONS, ORDERS, and JUDGMENTS

1. As to the Second Circuit Court of Appeals:

a. JUDGMENT filed February 3, 2004, AFFIRMING Judgment of the District Court, by unsigned SUMMARY ORDER, without opinion, as it pertains to dismissal of Complaint as against Teachers' Retirement System of the City of New York (Retirement System), Professional Staff

Congress/City University of New York (Union); and PSC-CUNY Welfare Fund (Welfare Fund); (Appendix to this Petition, A.1 and A.3-8)

b. OPINION filed February 3, 2004, AFFIRMING judgment of the District Court, as it pertains to dismissal of Complaint as against City University of New York (CUNY), by de novo review of immunity and by published unsigned PER CURIAM Opinion; (A.1, 9-19)

c. ORDER filed May 14, 2004, DENYING Petition for panel and en banc rehearings by unsigned Order endorsed on Motion dated February 20, 2004, and by Order in which names of appellants and descriptions of unnamed defendants are misspelled; (A.2, 20-21)

d. Judgment MANDATE ISSUED. CLOSED. June 14, 2004, unsigned, without opinion or order and a certified copy of the judgment, and without referencing order and action to be taken by District Court on remand. (A.2, 22-23)

2. As to the United States District Court for the Southern District, to review:

a. ORDER dated October 31, 2002, filed November 4, 2002, dismissing

defendant CUNY from the lawsuit, by immunity, without motion and hearing;(A.24-26)

b. OPINION AND ORDER dated March 27, 2003, GRANTING MOtion to dismiss complaint and closing the cases as to the remaining defendants, without a hearing (A.27-44), with certification of entry of Opinion (88259) and Order dated March 31, 2003 (should be March 27, 2003), on April 4, 2003 (A.45-46)

c. MEMORANDUM OPINION AND ORDER, dated May 15, 2003, denying Motion for reconsideration as untimely by converting plaintiffs' timely Motions to Vacate to untimely reconsideration Motions, without a hearing, entered May 22, 2003. (A.47-52)

JURISDICTION

The SUMMARY ORDER and the de novo OPINION of the Court of Appeals for the Second Circuit, whose Judgment is herein sought to be reviewed, are reprinted in the Appendix to this Petition (A.1, 3-8, and 9-19)

Timely Petitions for rehearing by panel and en banc were denied May 14, 2004 (A.2 and 20-23)

This Court's jurisdiction is

invoked pursuant to 28 U.S.C. §1254(1); Fed.R.Civ.P.10(a); and as of right, U.S.Constitution, Amendments V and XIV for due process and equal protection of the laws and Amendment VII for right to trial.

NOTIFICATION REQUIRED BY RULE 29.4(b)

In plaintiff-appellants' Petition for Rehearing of Appeal, dated February 20, 2004, appellants challenged the Constitutionality of Fed.R.Civ.P. 12(h)(3), as overbroad, vague, and subject to misapplication and errors. The Court of Appeals denied the entire Petition with one sentence which did not include any particulars and thus there was no response to the challenge.

Appellants have not as yet made the notifications required by Rule 29.4(b)

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

The United States Constitution, Amendment V, provides in pertinent part:

> ". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law. . . ."

Amendment VII of the Constitution provides:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any Court of the United States than according to the rules of the common law."

Amendment XIV of the Constitution, §1, provides in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. 1343 provides in pertinent part:

> "(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

Rule 7(a) of the Federal Rules

of Civil Procedure, provides in pertinent part:

> "Pleadings. There shall be a complaint and an answer . . . ."

Rule 7(b)(1) provides:

> "An application to the court, for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. . . ."

Rule 8(d) provides:

> "Averments in a pleading to which a responsive pleading is required other than those as to the amount of damage, are admitted when not denied in the responsive pleading.

Rule 12(h)(1) provides:

> "A defense of lack of jurisdiction over the person . . . is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course."

Rule 12(h)(3) provides:

> "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court, shall dismiss the action."

Rule 60 (b)(3),(4) provides:

"On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (3) fraud . . ., misrepresentation, or other misconduct of an adverse party; . . . (4) the judgment is void. . . ."

Rule 52 (a) provides:

"In all actions. . .without a jury. . .the court shall find the facts specially and state its conclusions of law thereon. . . ."

Rule 55 (a) provides:

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, as provided by these Rules and the fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default."

New York C.P.L.R., §3211(b), motion to dismiss defense, provides:

"A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit."

New York State Education Law includes in relevant part: "pensions, Career Retirement Plan, Tier I. . . ."

New York State Law of Torts includes in relevant part: "fraud, misrepresentation, concealment and

nondisclosure, prima facie tort, breach of contract, acting in concert. . . ."

STATEMENT OF THE CASE

From the outset of plaintiffs' employment and to the present, plaintiffs' employer and each and every agency connected to plaintiffs' employer, have been improperly depriving plaintiffs of their property and of their rights to earnings, benefits, and entitlements, nonstop.

PARTIES:

a. Plaintiff Alice Clissuras (AC), pro se, and Plaintiff Patricia Clissuras (PC), pro se, each brought an action by service of Summons and Complaint on October 11, 2002, against City University of New York (CUNY), Teachers' Retirement System of the City of New York (Retirement System), Professional Staff Congress/City University of New York (Union), and PSC-CUNY Welfare Fund (Welfare Fund), for deprivation of earnings, benefits, and entitlements.

b. Defendant CUNY is a corporation duly established and existing by virtue of the New York State Education Law and governs and administers New York

City Technical College, at which CUNY unit plaintiffs were employed.

Defendant CUNY improperly placed plaintiffs in the New York City Board of Education Teachers' System, in a City Teachers' Retirement System, and in a City medical coverage system, from the outset, by which actions, plaintiffs were and continue to be deprived of their New York State Pension, State Medical Insurance, and State employment records, and in the instant case are opposed by the Office of the Attorney General of the State of New York.

c. Defendant Retirement System is under the general management and control of the Teachers' Retirement Board of the City of New York and duly established and existing by virtue of Title B of Chapter 20 of the Administrative Code of the City of New York, providing pension benefits to Board of Education, City Public School teachers.

The Retirement System does not provide pensions for State professors. Plaintiffs are on City employment records, receive pensions from the City Comptroller, and are opposed in the instant case by the Corporation Counsel of

the City of New York, improperly.

d. Defendant Union is the collective bargaining representative of professional members of the instructional staff employed by the CUNY/Board of Trustees. Plaintiffs have been members as active employees and currently as retirees, during their period of service and retirement.

Defendant Union collectively with defendants CUNY and Retirement System use CUNY forms to calculate plaintiffs' pensions, which forms conceal the fact that the formulas for calculating the pensions are City pension calculations and not State.

e. Defendant Welfare Fund is a benefit program designed to supplement members' medical coverage and to provide important financial protection in the event of a serious illness. The Welfare Fund is financed entirely by employer contributions based on collective bargaining agreements between CUNY and the Union.

The Welfare Fund, the Union, and CUNY have collectively taken plaintiffs' comprehensive Blue Cross and

Blue Shield policies, with prescription coverage and converted the policies into City/Welfare Fund Supplemental co-insurer coverages. The City administers the medical care and the Welfare Fund administers the prescription coverage, including cards with which the computer cannot be accessed.

f. The potentially responsible unnamed defendants, including individuals and agencies, are potentially accountable until discovery proceedings make the names certain.

PENSIONS

a. Plaintiff AC retired September 1, 1982, pursuant to New York State Education Law, Career Retirement Plan, Tier I member, with 34 continuous years of pension service credit, at the College, and with earned rights to a 30-year allowance for completion of 30 years.

Instead, defendant Retirement System, in violation of Amendment XIV of the United States Constitution for equal protection of the laws and in violation of New York State Education and Tort Laws, deceptively calculated

plaintiff AC's pension pursuant to Municipal Law.

Thus, under the color of State Law, plaintiff AC's pension was reduced by elimination of the first five years of service, as "outside service" which resulted in a loss of $5,000 annually for the five eliminated years, and by elimination of the 30-year allowance which disappeared with the fraudulent conversion from 34 to 29 years, resulting in a second loss of $5,000 annually, amounting to a loss of over $200,000 for over 20 years, to date.

(Please see plaintiff AC's prima facie pension case and supporting evidence: October 11, 2002, AC, Complaint, pp. 7-15, and February 7, 2003 Combined Appendix in Support of Motion to Dismiss the Defendants, pp. 1-14.) (02cv8130)

b. Plaintiff PC retired January 30, 1986, with a pension service credit of 23 years, which included 17 years of employment at the College, a unit of CUNY, from 1969 to 1986; 3 purchased years (1966-1968) of New York state-private-academic service; and 3 years of retirement service credit pursuant to Chapter 665 of

the New York State Laws of 1984, for early retirement.

Instead, defendant Retirement System in violation of Amendment XIV of the United States Constitution, for equal protection of the laws, and in violation of New York State Education and Tort Laws, deceptively calculated plaintiff PC's pension pursuant to Municipal Law.

As a New York State Education Law Career Pension Plan, Tier I, member, with 23 years of pension service credit, plaintiff PC was entitled to a base pension calculated at 2.5 per cent per year or 57.5 per cent for 23 years. The failure to apply State Law resulted in the loss of $12,000 annually and over $200,000 for 18 years, to date.

To calculate the lower Municipal pension: (1) plaintiff PC's first year was reduced to a partial year by not placing plaintiff PC in a pension membership and by not deducting Social Security payments until September 1, 1969, instead of February 1, 1969, as required by New York State Retirement and Social Security Laws, which reduced plaintiff PC's years to 22.45;

(2) by falsely holding that plaintiff PC did not pay the cost of purchase, the three years of prior state service were not included in the pension, which reduced plaintiff's years to 19.45; and (3) by falsely stating PC's retirement date, the three early retirement years were not included, which reduced plaintiff PC's years to 16.45.

Defendants CUNY, Retirement System, and Union, in communicating the calculation of plaintiff PC's pension committed the following errors: (1) all three defendants improperly used "Plan B" which does not apply to plaintiff PC who is not a Board of Education city retiree; (2) all three defendants used twenty or more years of service to calculate the pension, which use mandated a calculation starting with half-pay for twenty years and which defendants failed to do; and (3) not one defendant asserted an exception for any of plaintiff PC's service which would exclude use of service towards the 20-year eligibility.

All of PC's 23 years qualify for New York State service pension at 57.5 per cent.

The use by the defendants of 20 or more years of "creditable service," without the assertion of an exclusionary exception in the law, and the calculation of PC's 23 creditable state years as a Plan B city pension constitute prima-facie evidence of failure to apply State Law equally to plaintiff, deprivation of due process, obstruction of justice, fraud, and identity theft.

(Please see plaintiff's prima facie pension case and supporting evidence: October 11, 2002, PC, Complaint, pp.7-17, and February 7, 2003 Combined Appendix in Support of Motion to Dismiss the Defendants, pp.23-35) (02cv8138)

MEDICAL COVERAGE

Plaintiffs joined the health programs when the plans became available to instructional staff, and plaintiffs have not changed health care provider and have not waived any contracted coverages or benefits, to date, making the insurer the primary provider.

As retirees and Medicare participants, New York State provides the identical coverage and benefits that plaintiffs had as active employees,

which include health insurance, with hospital service, all optional riders, including prescription drugs, and all additional Welfare Fund programs. Welfare Fund programs do not substitute in any way, for the contracted insurance policies between the health care provider and plaintiffs. The terms and conditions of the policies govern and contractually prevail.

The defendants CUNY, Welfare Fund, and Union deceptively and unlawfully placed plaintiffs in computer as New York City School retirees and under the color of State law converted plaintiffs' medical coverage from a Comprehensive State Benefits Plan to a non-equivalent sparse City Plan/Senior-Care Welfare Fund Plan with non-equivalent health insurance and Prescription Drugs coverages, all in violation of plaintiffs' contracted health insurance policies, riders, and the law.

Plaintiffs were not provided with a policy and currently are provided with cards that are not computer ready.

Plaintiffs do not know what their medical coverage is at any given time, since the coverage is discovered

when an event requires contact with a medical agency. It is then that plaintiffs discover that they cannot access their true coverage.

Thus, defendants Welfare Fund and Union use and change plaintiffs' medical coverage and Union membership in toto or in part, at will, depriving plaintiffs of their entitlements, with support from defendant CUNY. (Please see, for AC, October 11, 2002 Complaint, pp.15-20, and February 7, 2003 Combined Appendix in Support of Motion to Dismiss, pp.15-22.) (02cv8130) and (Please see, for PC, October 11, 2002 Complaint, pp.17-23, and February 7, 2003 Combined Appendix in Support of Motion to Dismiss, pp.36-38.) (02cv8138)

IDENTITY CONVERSION

The core of plaintiffs' identity theft claim is found in the taking of plaintiffs' identity as CUNY professors with earnings, one Social Security No., apiece, pension benefits, and ownership rights, and in the altering of each plaintiff's identity by defendants CUNY, Retirement System, Union, and Welfare Fund, collectively, at will, in part or

in whole, to unlawfully and deceptively diminish and deprive plaintiffs of their earnings, property, and rights.

Each defendant supports the improper acts of the others and each one acts in the taking, at relevant times, as each appears over the years, according to agency functions.

The taking of plaintiffs' identities began at the outset of each plaintiff's employment. It has been accomplished, in the main, by said defendants, by the establishment of two or more plaintiff identities, by concealment of information, records, contracts, policies, and plans, and by the use and dissemination of false information.

The taking, by defendants CUNY, Retirement System, Union, and Welfare Fund, of plaintiffs' rights to property, to privacy, and to personal and professional identities, denotes failure of equal application of laws, obstruction of justice, failure of due process, fraud, breach of contract, and breach of fiducial responsibility.

SUMMARY OF ARGUMENT

This is a case that is replete with errors and violations of the rights of Petitioners AC and PC.

By their Complaints and Motions to Dismiss the defendants, CUNY, Retirement System, Union, and Welfare Fund, the petitioners focus on three core causes of action: the taking of petitioners' pensions, the taking of petitioners' medical plans, and the taking of petitioners' identities.

Petitioners presented a complete prima facie case with referenced evidence and documentary evidence in support.

Defendants have not responded to any of three causes and have not controverted any one of the takings.

The District Court did not determine plaintiffs' Motions to Dismiss defendants for failure to respond and defend. The District Court did not reach any findings of fact and conclusions of law and did not rule on equal protection of the laws, on deprivation of due process, on identity conversions, and on fraud.

The Circuit Court did not

determine petitioners' appeals, did not reach any findings of fact and conclusions of law, and did not rule on equal protection, deprivation of due process, identity conversions, and fraud.

Petitioners' requests for rehearing by panel and en banc were denied by one sentence, for each.

The failure of the respondents to answer and defend against a prima facie case and evidence, denotes that the respondents admit all of the causes of action, and are subject to judgment by default and dismissal for failure to defend.

By not determining petitioners' Motions and Appeals, and by overlooking and not addressing equal protection, deprivation of due process, identity conversion, and fraud, the Courts made manifest and plain errors, which deprived petitioners of their Constitutional and legal rights.

There is no legal basis for allowing the respondents to continue in this case or to have allowed respondents to survive a Motion to Dismiss for failure to respond and defend.

ARGUMENT

FAILURE OF RESPONSE: THE DEFENDANTS

The defendants, CUNY, Retirement System, Union, and Welfare Fund, have not made an appearance in this action, from service of Complaint to present. The defendants have not verified any of their attorneys' responses and have not submitted or proffered any plaintiff records. The concealment of the records continues to conceal the issues and to interfere with due process and justice, for over 20 years.

The attorneys for the four defendants have not, from service of Complaint to present, denied or controverted the issue that plaintiffs are receiving Municipal pensions in place of State pensions, for over 20 years with a loss of over $10,000 annually for each plaintiff.

Defendants' attorneys have not denied or controverted that plaintiffs' medical coverage is a Municipal/Welfare Fund Coverage in place of the State full coverage.

Defendants have not denied or controverted that plaintiffs' employment records improperly show that plaintiffs

are City, Board of Education teachers, or in the alternative, on some records, plaintiffs do not appear to have been employed as teachers.

Defendants' attorneys did not serve answers, with the exception of the Union and Welfare Fund, who served defective Answers, and thus are considered not to have answered.

Defendants' attorneys did not serve affirmations of opposing facts, did not argue against the three core issues, and did not produce a shred of controverting evidence in support of dismissal of the Complaint.

The failure of the defendants who determined plaintiffs' pensions, medical coverages, and records, to defend against plaintiffs' facts and evidence is cause for immediate dismissal of defendants. [Fed.R.Civ.P. 7(a),8(d), and New York C.P.L.R.3211(b)]

With service of the Complaint, plaintiffs' prima facie cases shifted the burden of production of proof to defendants, who in this case made no response. (See Taggert, 924 F.2d at 46)

Defendants' concealment of all records is a fraudulent concealment of

the causes of action. The records should have been made available to plaintiffs according to Fed.R.Civ.P.26(a)(1), which requires a party, without a discovery request, to provide all documents that may be used for a party's claims or defenses, as part of the initial disclosures, at the very least.

DEFENDANTS' MOTIONS

Instead of a motion, one week after service of the Complaints, defendant CUNY made an ex parte suggestion by letter to the District Court stating that the Court lacked subject matter jurisdiction over plaintiffs' causes of action against CUNY because CUNY was entitled to Eleventh Amendment immunity, pursuant to Fed.R.Civ.P.12(h)(3). CUNY asserted that it would not use a motion for the immunity claim.

Absolute immunity is a rare entitlement. A government official acting in an official capacity is shielded by qualified immunity unless the official violated a Constitutional right. Vives v. City of New York, Southern District, December, 2003; see also Blouin,plaintiff-appellant, v. Spitzer, defendant-appellee, decided February 2, 2004, Doc.No.02-7997.

In the instant case, plaintiffs' Fifth and Fourteenth Constitutional equal protection and due process rights were violated by CUNY.

The District Court granted immunity for CUNY without a motion and without a hearing. In so doing, the District Court dismissed plaintiffs' disputed fact-laden Complaints, two weeks after service of the Complaints, removed an indispensable party, and overlooked Constitutional violations and deceits. CUNY did not respond to any paper or process in the District Court.

The moving defendants used a host of defenses which were unresponsive and unrelated to the three core causes of action. The defenses were fact defenses or affirmative defenses which did not reach the merits of the case, which were not dispositive, and for which the defendants bear the burden of proof at trial.

The District Court argued about six of the defenses in its March 27, 2003 Opinion and Order dismissing the Complaint against the remaining defendants: Retirement System, Union, and Welfare Fund.

By way of illustration, the District Court in its Opinion and Order held that "Because plaintiffs cannot evade the Statute of Limitations by alleging a continuing violation, their section 1983 claims against TRS are dismissed." (A.39)

The District Court relied on United States v. Evans, 431 U.S. 553, 558 (1977) as support for dismissing plaintiffs' claims against the Retirement System. However, in Freude v. Bell Telephone Company of Pennsylvania, 434 F.Supp. 1059 (1977), Justice Stevens, at p.1051, clearly states the holding of Evans and its application, as follows:

> ". . . (I)t is plain that the basic holding of Evans is that a current nondiscriminatory policy will not revive a time-barred act of discrimination even though such policy gives present effect to the past act of discrimination." (Emphasis added.)

Thus, Evans does not apply to plaintiffs' continuing violation claims for purposes of dismissal. There is no current policy which is to be used to revive a time-barred act. Plaintiffs' pensions were calculated as City pensions in 1982 and

they continue to be City pensions, at present.

Plaintiffs are receiving a City teacher pention amount. The most qualified agency to have information to defeat plaintiffs' claims would be the Retirement System, which System conceals all records. It will not even state the amount of a City pension. The concealment of all records is a matter of fraud.

Two grounds exist for equitably estopping a defendant from invoking the Statute of Limitations: (1) fraudulent concealment of the existence of a cause of action, and (2) inducement of delay in suing on a known cause of action. Kamruddin v. Desmond, 741 N.Y.S.2d 559 (2d Dept. 2002). The defendants' "purposeful concealment" of medical records was determinative, said the court, because, "no one may take advantage of his or her own wrongdoing."

Each defendant is concealing records. Each defendant is violating equal protection and due process rights. Each defendant has not responded to and defended against plaintiffs' prima facie case; each defendant has argued unrelated defenses; and each defendant has not argued dispositive defenses.

The disputed facts of the Complaint cannot be dismissed on motion. Fraud cannot be dismissed on motion.

The District Court did not determine plaintiffs' Motions to Dismiss the Defendants for failure to respond and defend. The District Court did not determine plaintiffs' Motions to Vacate the District Court's Order granting immunity to City University and the Order Dismissing the Complaint against the "remaining" defendants.

The District Court acted outside of the Court's authority by dismissing the entire Complaint, without a hearing, without exchange of evidence, without discovery, without issue conference, and without a trial. The Court is not the trier of facts. If even one fact remains standing, it must be tried. Here, all the facts are left standing.

The Circuit Court did not determine plaintiffs' Appeal. The Court overlooked the facts and issues of plaintiffs' cases and devoted attention to a de novo review and determination of the immunity for CUNY. The Circuit Court did not cure any of the errors made by the District Court in granting

immunity for CUNY. Affirming the immunity is a problem since it is a cover for Constitutional violations. The District Court dismissed the fact-based Complaint via immunity and the Circuit Court, by affirming the judgment of the District Court is also dismissing a fact-based Complaint. As to the Court's comments regarding money judgments and the State, plaintiffs' are seeking solely compensatory damages which does not present a problem for the State or immunity since the money is being disbursed as a matter of course.

CONCLUSION

When the defendants argue affirmative defenses instead of meritorious defenses, such as stating the law by which the pensions were determined or stating the terms of the contract by which medical coverage was determined, that means that they have no meritorious defense and that the causes of action are admitted.

By an earlier case, in 1985, District Court for the Eastern District, did not rule on equal protection, due process, identity conversion, and fraud.

That Court dismissed the entire Complaint for a time bar violation on a civil rights claim, which violation was challenged and required proof to reach the merits. However, there was no ruling on plaintiff's challenge.

That earlier dismissal for a challenged affirmative defense allowed the defendants to continue taking plaintiffs' benefits and earnings, to date. The District Court's dismissal of the Complaint in 2002 has allowed the defendants to continue taking plaintiffs' benefits, to date. The dismissal then and now does not provide any basis for allowing Constitutional violations and fraud to continue, nonstop.

"No one may take advantage of his or her own wrongdoing;" and there is no law which may be used as a shield against violations of law.

To dismiss the Complaint at the pleading stage, the law must be pure and unchallengeable. Plaintiffs request this Honorable Court to grant to plaintiffs judgment by default as against the defendants for failure to answer and defend. The law is clear, and petitioners' complete prima facie case warrants default judgment. Due to the

purity of the law, any judge may make such determination.

Regardless of their defense, the respondents must respond to the petitioners' case first. Here, the failure to respond turned into any defense except a responsive one.

This case should have ended, on petitioners' part, with the first failure to respond to the issues. The Courts made manifest and plain errors which deprived petitioners of their Constitutional due process and equal protection rights.

The Orders of the Courts are void due to the absence of decisions on petitioners' Motions and Appeals. It does not appear that the determinations are in the form of Orders, signed by the Court, and directing the Clerk to enter.

The June 14, 2004 Judgment Mandate does not refer to a specific order and there are no directions as to action to be taken by the District Court on remand.

No Court has considered the merits of the case. No Court has dismissed on the merits. The only dismissals have been dismissals of the

Complaints on affirmative defenses, without any bases in law.

WHEREFORE, petitioners respectfully request that a writ of certiorari be granted, pursuant to, inter alia, Fed.R.Civ.P.10(a).

Respectfully submitted,

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